

In re Antonio Aguirrezabal OROZ
Appln. No. 10/530,863
Amendment dated December 22, 2009
Reply to Office Action of September 22, 2009

REMARKS

The Office Action of September 22, 2009, has been carefully studied. Claims 2-5 remain, and claims 6 and 7 have been added, so that the present application now contains independent claims 5 and 7, and dependent claims 2-4 and 6. As was the case previously, none of Applicant's claims were rejected on the basis of any prior art, and claims 2-5 are again indicated as being directed to allowable subject matter, the only problem being matters of form. Applicant respectfully requests favorable consideration and early formal allowance.

If any problems remain, Applicant respectfully requests the favor of a telephone call from the Examiner so that any further problems can be worked out over the telephone; or even that a personal interview be arranged prior to any further Office Action, if same would be helpful or needed.

New claims 6 and 7 have been added. Claim 6 is a new dependent claim which further specifies the location of the flexible tongue (15) and the fixed ledge (14). Such claim is presented based on one of the points raised in the rejection under §112, discussed further below. Claim 6 is patentable because it depends from and incorporates the subject matter of allowable claim 5.

New claim 7 is a second independent claim which covers generally the same subject matter of the first independent claim 5, and it is patentable for the same reasons as claim 5. Claim 7 is presented in an effort to comply with the Examiner's comments as to what is required under the second paragraph of §112, if the Examiner feels that claim 5 as amended above still does not fully

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comply with the second paragraph of §112. Applicant is content to proceed with **either** claim 5 **or** claim 7, although Applicant prefers new claim 7.

Claims 2-5 have been objected to. In deference to the Examiner's views, the claims have been amended taking into account the Examiner's comments.

Claims 2-5 have been rejected under the second paragraph of §112. The rejection is respectfully but strenuously traversed.

First, claim 5 has been substantially amended taking into account the comments of the Examiner. Applicant believes and respectfully submits that claim 5 particularly points out and distinctly claims the present invention, that claim 5 would be clearly understandable to anyone skilled in the art, and that claim 5 therefore fully and absolutely meets the requirements of the second paragraph of §112.

As indicated above, new claim 7 constitutes a complete rewriting of previous claim 5, taking into account the Examiner's commentary. Thus, the text "the diameter of the solid projection (12) being smaller than that of the internal cavity (22)" has been deleted from claim 5 in writing claim 7. The reason for this is that it is redundant, since claim 7 already specifies that "said hollow insert (13) comprising an internal cavity (22) to receive the solid projection (12)", which means that necessarily the diameter of solid projection (12) must be smaller than that of the internal cavity (22).

The text "the tamper proof structure comprising" has been deleted from claim 5 in writing claim 7. The reason for this is that, truly, the flexible tongue (15) and the fixed ledge (14) are

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not part of the means which make the tubular container tamper proof. What items (14, 15) really do is provide a slight clicking sound when the user turns the cap and opens the hole (24), and when he or she turns the cap backwards and closes the hole (24). Items (14, 15) really have nothing to do with preventing the cap from being violated. The tamper-proof device is really provided by additional elements, not claimed by the present invention, for example those shown by EP0410922 and EP0520118 (referred to in the prior art description).

The Examiner asks where the flexible tongue (15) and the fixed ledge (14) are located. The flexible tongue (15) is located on the inner skirt (10) of the cap (2), whereas the fixed ledge (14) is located on the tube (1). Applicant sees no reason for limiting the claims to such a specific embodiment, because it is unimportant where this particular structure is located. On the other hand, Applicant has submitted new claim 6 which sets forth the location of such interacting structure in more detail.

The Examiner asks whether the conical portion (claim 3) fits within the hole as well as the spherical portion as called for in claim 5. Applicant respectfully answers, "Yes." The conical portion (21) fits within the hole as well as the spherical portion. Indeed, claim 3 already specifically states that the conical portion (21) "correspondingly fits into the hole (24)..." Applicant believes that the language is quite clear and explicit, but **Applicant is willing to consider any further language which the Examiner might suggest.**

A question of antecedent basis has been raised with respect to claim 3, but Applicant believes that the statement in the Office Action is a typographical error and should refer to claim 4. Claim 5 (and now claim 7) refers to at least one annular

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ledge, and that provides adequate antecedent basis for "the annular ledges." Nevertheless, in deference to the Examiner's views, claim 4 has been further amended to make the antecedent basis more precise.

Withdrawal of the rejection is in order and is respectfully requested.

As regards the first paragraph on page 4 of the Office Action, Applicant respectfully repeats that the claimed structure, which is stated in the Office Action (and previous Office Action) to be "allowable," does not call for previously-known elements by which the claimed structure can be made tamper-proof.

With respect to the second paragraph on page 4 of the Office Action, Applicant respectfully submits that claim 5 in its previous form (and amended claim 5 and new claim 7) recites the interaction functionally, which is perfectly satisfactory.

As regards paragraph 6 (the third paragraph on page 4 of the Office Action), no arguments against any prior art are necessary, as no prior art rejections have been made, and the claims have been indicated as being directed to "allowable" subject matter. No amendments to the specification or drawings have been made, and support is clear for all recitations appearing in the claims.

As regards the amendments presented above, Applicant respectfully repeats by reference the commentary made in the Reply of March 16, 2009, particularly at page 7 thereof. However, the

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first and second sentences of the second paragraph on page 8 of the Reply of March 16, 2009, are incorrect, and are hereby withdrawn.

The prior art documents of record and not relied upon by the PTO have been noted, along with the implication that such documents are deemed by the PTO to be insufficiently material to warrant their application against any of Applicant's claims.

Applicant believes that all issues raised in the Official Action have been addressed above in a manner that should lead to patentability of the present application. Favorable consideration and early formal allowance are respectfully requested.

If the Examiner has any questions or suggestions, Applicant again respectfully requests the Examiner to contact the undersigned at (202) 628-5197, before issuing any further Office Action.

Respectfully submitted,

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